

Opinion No. 54-15—May 7, 1954

SUBJECT: PHYSICAL THERAPY—Enactment of statutes providing for registration and licensing of practitioners of, does not affect right of chiropractor to practice, but he may not hold himself out as licensed or registered physical therapist unless he complies with statute; after one year from effective date of licensing statute, nurse, whether in chiropractor's office or elsewhere, may not use physical therapy procedures unless licensed under statute or qualified under exemptions therefrom.

Requested by: BOARD OF CHIROPRACTIC EXAMINERS.

Opinion by: EDMUND G. BROWN, Attorney General.

Howard S. Goldin, Deputy.

The Board of Chiropractic Examiners of the State of California, has submitted the following question:

Will doctors of chiropractic or their office nurses be in violation of the physical therapy laws by using physical therapy in their practice?

The conclusion reached may be summarized as follows:

The enactment of the two Physical Therapy Statutes in 1953 neither increased nor decreased the scope of the practice of Chiropractic. To practice physical therapy as he could practice it prior to the physical therapy regulatory practice acts, a chiropractor licensed in California need not be registered under Chapter 5.6 of Division 2 of the Business and Professions Code nor licensed under Chapter 5.7 of Division 2 of said Code. However, a licensed chiropractor cannot represent himself as being either a registered physical therapist or a licensed physical therapist unless in fact he is so registered or licensed.

After one year from the effective date of Chapter 5.7 of Division 2 of the Business and Professions Code a nurse, chiropractor's or otherwise, to use physical therapy procedures for compensation received or expected, would have to be a licensed physical therapist, unless such nurse was a registered physical therapist under Chapter 5.6 of Division 2 of the Business and Professions Code, or such nurse could qualify under one of the other exemptions enumerated in Business and Professions Code Section 2665.

ANALYSIS

Two physical therapy regulatory practice acts were passed by the 1953 Session of the Legislature, namely Chapter 1823, California Statutes of 1953, and Chapter 1826, California Statutes of 1953. Specifically, Chapter 1823, Statutes of 1953 added to Division 2 of the Business and Professions Code, Chapter 5.6 pertaining to *registered* Physical Therapists, which Chapter 5.6 is known as the "Physical Therapists Practice Act." Chapter 5.7, Division 2 of the Business and Professions Code was added by Statutes of 1953, Chapter 1826 and relates to *licensed* Physical Therapists.

In Section 2601 of the Business and Professions Code, concerning registered physical therapists, the term "physical therapy" is defined as follows:

"'Physical therapy' means the treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, or electricity, and by massage and active or passive exercise. The use of roentgen rays and radium, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term 'physical therapy' as used herein."

Section 2660 of the Business and Professions Code, applicable to licensed physical therapists, contains a substantially similar definition, except that in Section 2660 physical therapy includes "resistive exercise," and there is a specific clause reciting that the issuance of a physical therapist's license shall not authorize the diagnosis of disease. The two California statutory definitions are substantially similar to the generally accepted definitions of physical therapy (Webster's New International Dictionary, 2nd Edition Unabridged, p. 1852; Stedman's Medical Dictionary, 18th Revised Edition, 1953, p. 1062; The American Illustrated Medical Dictionary, Dorland, 21st Edition pp. 856, 1507).

The terms physiotherapy and physical therapy generally are used interchangeably. (The American Illustrated Medical Dictionary, Dorland, 21st Edition, p. 1121; Stedman's Medical Dictionary, 18th Revised Edition, 1953, p. 1062.)

With respect to registered physical therapists Section 2624 of the Business and Professions Code provides:

"Nothing contained in this chapter shall be construed to limit or prevent the practice of physical therapy by any person not registered under this chapter, if such person does not represent himself to be a registered physical therapist."

Chapter 5.6 of Division 2 of the Business and Professions Code relating to registered physical therapists limits or prevents representation as being a registered physical therapist by one who is not registered in fact. However, so far as the registered physical therapists legislation is concerned, a chiropractor can still practice physical therapy to the same extent that he could prior to such legislation.

Turning to the statutes on the licensing of physical therapists Section 2665 of the Business and Professions Code provides:

"One year from the effective date of this act, no person not licensed under this chapter shall practice physical therapy in this State for compensation, received or expected; provided, however, that this prohibition shall not apply to any of the following:

(a) Any activities authorized by their licenses on the part of any persons licensed under this code or any initiative act;

(b) Registered physical therapists licensed under chapter 5.6 of Division 2 of this code;

(c) The practice of physical therapy procedures by registered nurses

when such practice is incidental to their conventional nursing duties and is performed under the direct orders and supervision of a person licensed in one of the healing arts;

(d) Any activities of non-registered nurses permitted by Section 2731 of this code;

(e) Any person employed by any agency, bureau or division of the Government of the United States, while performing the duties of such employment;

(f) The demonstration of any physical therapy equipment by a salesman or merchant engaged in selling such equipment;

(g) The administration of massage, external baths or normal exercise."

Pursuant to Section 2665, after one year from the effective date of Chapter 1826, California Statutes of 1953, no person not licensed under that Chapter can practice physical therapy for compensation received or expected unless such person falls within one of the exceptions enumerated in said Section.

Under Business and Professions Code Section 2665(a) there is a specific exception as to any activities authorized by their licenses on the part of any persons licensed under this code or any *initiative* act. The Chiropractic Act is such an initiative act as falls within the exception contained in subdivision (a) of Section 2665 of the Business and Professions Code. (The Chiropractic Act of California—Calif. Stats. 1923, p. lxxxviii, initiative measure approved November 7, 1922, effective December 21, 1922 as amended by Calif. Stats. 1947, Ch. 141, an initiative measure submitted to and approved by the electors, pursuant to Section 1b of Article IV of the California Constitution, on November 2, 1948, as amended by Calif. Stats. 1948, Ch. 500, an initiative measure submitted to and approved by the electors, pursuant to Section 1b of Article IV of the California Constitution, on November 7, 1950.)

The Chiropractic Initiative Act was not amended by the legislative enactment of Chapter 5.6 and Chapter 5.7 of Division 2 of the Business and Professions Code, since no initiative measure can be amended except by vote of the electors unless otherwise provided in said initiative act (Calif. Constitution Art. IV, Sec. 1), and there is no provision for legislative amendment in the Chiropractic Act. The enactment of the two Physical Therapy Statutes in 1953 neither increased nor decreased the scope of the practice of chiropractic. To the same extent that a chiropractor could practice physical therapy before the 1953 legislation, it follows that such practice of physical therapy still is within the scope of the chiropractic license and that to engage in such practice of physical therapy a chiropractor need not be registered under Chapter 5.6 nor licensed under Chapter 5.7 of Division 2 of the Business and Professions Code. However, a chiropractor cannot hold himself out as being either a registered or licensed physical therapist unless he is in fact so registered or licensed.

At the present time neither the registered (Calif. Stats. 1953, Ch. 1823) nor the licensed (Calif. Stats. 1953, ch. 1826) physical therapists legislation make un-

lawful the practice of physical therapy by a person who is neither licensed nor registered. As previously indicated, there now is a prohibition against a person representing himself as being either a registered physical therapist or a licensed physical therapist, unless he is in fact so registered or licensed. After one year from the effective date of Chapter 5.7 of Division 2 of the Business and Professions Code, any nurse, including a nurse for a chiropractor, in order to use physical therapy procedures for compensation received or expected would have to be a licensed physical therapist, unless such nurse was a registered physical therapist under Chapter 5.6 of Division 2 of the Business and Professions Code or such nurse could qualify under one of the other exemptions set forth in Section 2665 of the Business and Professions Code. Subsection (c) of Section 2665 does not require a license for:

"The practice of physical therapy procedures by registered nurses when such practice is incidental to their conventional nursing duties and is performed under the direct orders and supervision of a person licensed in one of the healing arts."

Under that specific exemption each of three elements is required. It is essential that the nurse be a registered nurse, that the practice of physical therapy procedure be incidental to such nurse's conventional nursing duties, and that such physical therapy practice be performed under the direct orders and supervision of a person licensed in one of the healing arts. Business and Professions Code Section 2665 in subdivision (d) also exempts from the requirement of physical therapist's licenses any activity of non-registered nurses permitted by Section 2731 of the Business and Professions Code. Section 2731 is a very limited application and reads as follows:

"This chapter does not prohibit nursing or the care of the sick, with or without compensation or personal profit, when done by the adherents of and in connection with the practice of the religious tenets of any well recognized church or denomination, so long as they do not otherwise engage in the practice of nursing."